

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 10-16-69721
HUD# 07-16-5294-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

BBCS – HAWKEYE HOUSING, LLC

1 Country View Road, Suite 100
Malvern, Pennsylvania 19355-1439

BALFOUR BEATTY CONSTRUCTION, LLC

600 Galleria Parkway, Suite 1500
Atlanta, Georgia 30339-5910

COMPLAINANT

ANGELA JACKSON

Commissioner, Iowa Civil Rights Commission
400 East 14th Street
Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street
Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the “Iowa Civil Rights Act of 1965,” Iowa Code Chapter 216. Complainant alleged Respondents constructed covered multifamily dwellings in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the “accessible and usable public and common use areas” and the “light switches, electrical outlets, thermostats, and other environmental controls in accessible locations” requirements.¹

Complainant specifically alleged, in Unit 119, 204 Hawkeye Court, Aspire at West Campus [“Aspire”], three features within the public and common use areas and one feature within a

¹ See Iowa Code §§216.8A(3)(c)(3)(a) [Requirement 2 – Accessible And Usable Public And Common Use Areas]; and 216.8A(3)(c)(3)(ii) [Requirement 5 – Accessible Light Switches, Electrical Outlets, Thermostats, And Other Environmental Controls In Accessible Locations].

covered unit appeared inaccessible to a person utilizing a wheelchair for mobility – (1) none of the four parking spaces designated as reserved for persons with disabilities in the public parking area located south of Building 204 had the required “Van Accessible” signage; (2) the two access aisles serving the four parking spaces designated as reserved for persons with disabilities were too narrow – one was measured at 55 ½ inches wide, which is less than the 60-inch minimum required for regular access aisles, and the other was measured at 103 inches wide, which is less than the 132-inch minimum required for van-accessible parking spaces that are ≥ 60 inches and < 96; (3) the height of the midlines of the keyholes in the top two rows of mailboxes at one of the kiosks was measured at 57 ½ and 54 ¾, which is higher than the 54-inch maximum allowed for a parallel approach by persons using a wheelchair.; and (4) the highest thermostat control in the living room was measured at 49 ½ inches above the finished floor, which is higher than the 48-inch maximum height allowed for environmental controls.

Description of the Subject Property

Subject Property

According to an “Address Memo” and the Building Permit Application obtained from the City of Iowa City Building Inspection Services’ website, Aspire consists of six buildings – a building containing the leasing office and other common areas; two three-story dwelling-unit buildings and three four-story dwelling-unit buildings. The table below lists the configuration of the dwelling units at Aspire, the certificate of occupancy for each of the six buildings – which were signed by Douglas Boothroy, Building Official for the City of Iowa City, Iowa – and the corresponding 300-day filing dates:

ADDRESS [HAWKEYE COURT]	STORIES	UNITS PER STORY	TOTAL UNITS	CERTIFICATE OF OCCUPANCY DATE	300-DAY DATE
144	3	21	63	July 30, 2014	May 26, 2015
158	1	[Community Building]	N/A	August 8, 2014	June 4, 2015
172	3	21	63	July 30, 2014	May 26, 2015
204	4	21	84	August 26, 2016	June 22, 2017
228	4	21	84	July 29, 2016	May 25, 2017
260	4	21	84	July 29, 2016	May 25, 2017

Due to timeliness, the scope of this agreement is limited to the three buildings located at 204 [“Building 204”], 228 [“Building 228”], and 260 [“Building 260”] Hawkeye Court, and their associated public and common use areas. These three buildings were issued certificates of occupancy within 300 days of October 27, 2016, the complaint filing date. An elevator is

available to residents in these three buildings, which means all 252 units are “covered”² by the design and construction provisions of the ICRA and FHA.³

Respondents’ Defenses:

When asked in the questionnaire what was true or false about the allegations, Respondents BBCS – Hawkeye Housing, LLC (“Hawkeye Housing”) and Balfour Beatty Construction, LLC (“BB Construction”) (collectively, “Respondents”) answered:

Thermostat control. The thermostat control was slightly out of tolerance; however, it has been corrected and is now compliant.

Mailbox height. Mailboxes for the units that are in buildings serviced by elevators have a top key height of 48”, with the mailboxes for other units in buildings without elevator service also in compliance with applicable requirements for those units.

Parking. First access aisle was measured at 60”, outside to outside, with one space measuring 102” and the other space measuring 101”. Second access aisle measured at 96”, outside to outside, with van space measuring 139” inside to inside, and the other space measuring 100”. A sign pertaining to van parking has been installed.

Report of Preliminary Findings:

Pre-inspection and pre-report modifications and retrofits

After being notified of the current complaint on November 3, 2016, and prior to ICRC’s full onsite inspection on December 16, 2016, BB Construction representative David Prindall stated they completed modifications and retrofits to correct some of the deficiencies observed by ICRC testers as alleged in the complaint. Prindall stated they (1) lowered all non-compliant thermostats to a height at or below 48 inches and (2) installed the “Van Accessible” signage missing from the parking spaces designated as reserved for persons with disabilities.

Additionally, Prindall stated the mailbox kiosks assigned to Buildings 204, 228, and 260 are in fact compliant. After inspecting the mailbox kiosks, ICRC investigators measured the height to the midline of the top row of mailboxes in the kiosks assigned to the three buildings included in the scope of the current agreement at 48 inches. ICRC investigators measured the height of the midline of the keyhole in the top row of mailboxes for Building 144 at 57 ½ inches, which is consistent with the measurements alleged in the complaint. Upon further review of the photographs taken by the tester, ICRC investigators concluded the measurement reported by the tester was of the height of the top row of mailboxes of a kiosk that is assigned to one of the older “not timely” buildings, and that mailboxes for all

² Fair Housing Accessibility Guidelines, Federal Register, Vol. 56, No. 44, Wednesday, March 6, 1991, Rules and Regulations, page 9500.

³42 U.S.C. §3604(f)(7); Iowa Code §§216.2(4)(a), 216.2(4)(b).

units which were “covered units” were at heights that complied with ICRA and FHA. Accordingly, the allegation about the height of the mailboxes exceeding the 54-inch maximum requirement was not substantiated.

On April 3, 2017, BB Construction representative Alex Voris stated in an email that the non-compliant parking spaces have been corrected, as stated in the following excerpt:

The weather has finally cooperated enough that we have been able to remove and repaint the lines to conform to the conditions listed below in your email. Access isles are 60” or 96” (van), with spaces at a minimum of 96” from centerline to centerline.⁴

On May 3, 2017, ICRC submitted the Report of Preliminary Findings to Respondents.

Respondents’ Response to Report of Preliminary Findings:

On May 23, 2017, Respondents stated in a conference call with ICRC that BB Construction would submit a survey certified by an engineer as documentation that the parking spaces designated as reserved for persons with disabilities and the access aisles were restriped so as to meet the minimum width requirements of Section 502 of the 2010 ADAAG.⁵ See “2010 ADA Standards for Accessible Design” online at https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf.

On May 31, 2017, BB Construction submitted a survey certified by Engineer James E Lichty, which indicated the parking spaces designated as reserved for persons with disabilities and the access aisles had been restriped such that they met the minimum width requirements from the ADAAG referenced above.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of the subject property, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Voluntary and Full Settlement

1. The Parties acknowledge this Predetermination Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
2. The Parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing, liability or violation of law. Nor is the execution of this Agreement an admission by

⁴ Voris, Alex. “RE: Follow up response” Message to Emigdio López-Sanders. April 3, 2017, Email.

⁵ See Appendix A.

Complainant that any claims asserted in her complaint are not fully meritorious; nor is the execution of this Agreement an admission by Respondents as to any of the matters asserted or alleged by Complainant in the complaint.

3. The Parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
4. The Parties agree the Commission may review compliance with this Agreement. And as part of such review, the Parties agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.
5. ICRC acknowledges that based on the information gathered from (1) Respondent Prindall's statements; (2) the observations and measurements taken during ICRC's full onsite inspection; and (3) the certified parking lot survey submitted by Respondents, all of the substantiated deficiencies alleged in the current complaint are determined to be corrected and no longer present.
6. ICRC acknowledges there are no additional retrofits or modifications that Respondents are required to complete because all identified or uncovered deficiencies were corrected prior to the execution of this agreement.

Disclosure

7. Because, pursuant to Iowa Code §216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. *See* Iowa Code §22.13.

Release

8. Complainant hereby waives, releases, and covenants not to sue Respondents or any of their affiliates with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the circumstances or issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing / Accessible Design and Construction Training

9. Respondents agree that BBCS-Hawkeye Housing, LLC and Balfour Beatty Construction, LLC, respectively, shall within 120 days from the date of the Closing Letter from ICRC each submit a letter to ICRC stating the following:
 - (a) They have each reviewed and are familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), which may be obtained online at <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairful.pdf>.; and,
 - (b) They each (i) have reviewed and are familiar with the Fair Housing Act Design Manual, and, (ii) understand the Seven Main “Design Requirements for the Guidelines”.

BBCS-Hawkeye Housing, LLC
RESPONDENT

Date

Balfour Beatty Construction, LLC
RESPONDENT

Date

Angela Jackson
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date